



THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant (s): Alain M. Sagnard, et al.

Serial No.: 10/037,942

Group Art Unit: 1745

Filed: January 3, 2002

Examiner: Rhee, Jane J

For: BUILDING PANEL HAVING AT LEAST TWO PANEL DOMAINS OF
DIFFERENT AVERAGE COMPRESSIVE STRENGTH

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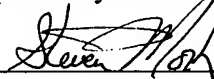
Sir:

BRIEF FOR APPELLANT - FEE SHEET

This is an appeal to the Board of Appeals from the action of the Primary Examiner finally rejecting Claims 1-4, 6, 7, 9-12 and 15-22 , in the above-identified patent application.

Under 37 CFR 12.187, Appellant seeks to apply the fees already paid for a prior appeal on this Application to the present appeal. As a result, Appellant does not believe any fee is due. If they are mistaken, please charge or credit the necessary amount to Deposit Account No. 04-1512. One original and two duplicate copies of this sheet are enclosed.

Respectfully submitted,



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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No. : 10/037,942 Confirmation No. 7761
Applicant (s) : Alain M. Sagnard, et al.
Filed : January 3, 2002
TC/A.U. : 1745
Examiner : Rhee, Jane J
Title : BUILDING PANEL HAVING AT LEAST TWO PANEL DOMAINS
OF DIFFERENT AVERAGE COMPRESSIVE STRENGTH
Docket No. : 61301A
Customer No. : 00109

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DATE OF DEPOSIT: March 10, 2006

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Sir:

BRIEF FOR APPELLANT

This is an appeal from the final rejection of Claims 1-4, 6-12, and 15-22 dated 22 January 2006.

REAL PARTY IN INTEREST

The Real Party in Interest in this Appeal is Dow Global Technologies Inc.

RELATED APPEALS AND INTERFERENCES

This is a new Appeal following an appeal the brief of which Appellant filed on 4 February 2005 in response to which the Examiner withdrew her rejections and reinitiated prosecution.

STATUS OF CLAIMS

The Office identifies that Claims 1-4, 6-12 and 15-22 are pending and subject of a Final Rejection. Claim 18 is pending and is also indicated as allowable except as it depends from a non-allowed claim. Claims 5, 13 and 14 were previously cancelled. Appellant appeals the final rejection of Claims 1-4, 6-12 and 15-17 and 19-22.

STATUS OF AMENDMENTS

Appellant filed no amendments after the pending final rejection.

SUMMARY OF INVENTION

The present claims recite a building panel (page 4, lines 14-32) that is useful for inserting into any of a number of cavities (*e.g.*, page 1, lines 16-23; element 115 of Figures 2A-C as identified on page 12, lines 29-34; element 185 of Figures 4A-B as identified on page 14, lines 4-5) that may have different sizes, shapes and obstacles (*e.g.*, page 3, lines 23-27). The building panel contains at least two panel domains (page 5, line 22- page 6, line 3), each with an essentially homogeneous compressive strength and an average compressive strength (page 6, lines 10-24). The building panel has at least two panel domains having different compressive strengths (page 8, lines 10-21); is essentially free of a combination of hollow and solid foam strands (page 18, lines 9-14); has an essentially uniform panel thickness (page 4, lines 12-21); fits fully within a cavity defined by cavity walls (*e.g.*, page 1, lines 16-21; elements 110 and 120 of Figures 2A-C as described on page 12, lines 28-29; elements 180 and 190 of Figures 4A-B as identified on page 14, lines 4-5 and 12-13); has a compressive recovery that supplies sufficient pressure against the cavity walls to frictionally retain the building panel within the cavity (page 9, lines 25-35); has an edge containing a panel domain extending from a primary face to an opposing face at that edge (*see, e.g.*, page 18, lines 18-29; elements 20 and 30 in Figure 1; elements 60 and 100 in Figures 2A-C; element 134 in Figure 3A; elements 144, 146, 148 and 150 in Figure 3B; elements 162 and 172 in Figures 4A-B; and Example 2 on page 21, lines 1-7); and, if the panel has at least two adjacent panel domains containing fibrous material with a fiber orientation, the fiber orientation of one panel domain is non-

orthogonal to the fiber orientation of at least one adjacent panel domain (page 6, line 30 – page 7, line 8). The building panel has a primary face and a face opposing the primary face (page 4, lines 14-32) and a thickness (defined on page 4, lines 33-34 as the perpendicular distance between the primary face and the face opposing the primary face). The building panel further has a slit penetrating to less than the depth of the panel thickness and that traverses and severs the primary face or the face opposing the primary face (page 13, lines 1-9; figures 2A-C).

Claim 22 provides an additional limitation to Claim 1 that is pertinent in the present appeal and that requires the panel domains to extend through the thickness of the panel. As such, the panel of Claim 22 has at least two panel domains extending through the thickness of the panel. (page 5, line 31 through page 6, line 1; all of the figures illustrate panels with panel domains extending through the thickness of the panel).

ISSUES

The first issue is whether Claims 1 is patentable under 35 USC §103(a) over Walendy (US 5,529,824) in view of Ducharme (US 6,062,244). Embodied in this issue is whether Claims 1-4, 6-12, 15-22 are patentable under 35 USC §103(a) since all rejections incorporates the Office's basis for rejecting Claim 1 and add additional references only as basis for additionally claimed limitations. This first issue is broken down into two sub-issues:

1(a) – Whether either Walendy or Ducharme teaches or suggests a slit that penetrates to a depth less than a panel thickness that traverses and severs a primary face of the panel.

1(b) – Whether either Walendy or Ducharme teaches or suggests a slit that facilitates bending of a building panel into a non-planar configuration.

The second issue is whether Claim 22 is patentable under 35 USC §103(a) over Walendy (US 5,529,824) in view of Ducharme (US 6,062,244). In particular, whether either Walendy or Ducharme teaches or suggests a panel comprising at least two panel domains as claimed in Claim 1, wherein the panel domains extend through the thickness of the panel.

GROUPING OF CLAIMS

Claims 1-4, 6-12, 15-17 and 19-21 stand or fall together. Claim 22 stands or falls separately. Appellant believes Claim 22 is patentable for the same reasons as Claim 1 and further for the additional limitation that the panel domains extend through the thickness of the panel.

ARGUMENT

The basis for all rejections is 103(a) – an obviousness rejection – based on a combination of two or more references. However, the Office has fallen short of establishing even a *prima facie* case of obviousness against the pending claims of the present Application.

Requirements for *Prima Facie* Case of Obviousness

There are three basic criteria that the Office must meet to establish a *prima facie* case of obviousness: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be reasonable expectation of success; and (3) the prior art reference (or references) must teach or suggest all the claim limitations. (*see*, MPEP. §2142, third paragraph and supporting citations). Of primary issue in this appeal is the third criterion.

To support a case of obviousness, the Office must provide references that are “sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed substitution, combination or other modification.” (*In re Linter*, 173 USPQ 560, 562 (C.C.P.A. 1972)). The references that the Office cites must “appear to have suggested the claimed subject matter.” (*In re Rinehart*, 189 USPQ 143, 147 (C.C.P.A. 1976)). A general statement in a reference that encompasses a specifically claimed invention does not suggest the invention if the teaching only provides “general guidance and is not at all specific as to the particular form of the claimed invention and how to achieve it. Such a suggestion may make an approach ‘obvious to try’ but it does not make the invention obvious.” (*Ex parte Obukowicz*, 27 USPQ2d 1063, 1065 (B.P.A.I. 1992)).

ISSUE 1: *Whether Claims 1 is patentable under 35 USC §103(a) over Walendy (US 5,529,824) in view of Ducharme (US 6,062,244).*

The Office has rejected Claims 1-4, 6-11, 21 and 22 under 35 USC 103(a) as obvious over Walendy in view of Ducharme. Appellant will address this issue as it pertains to Claim 1 since each of these claims depends from and therefore is narrower in scope than Claim 1 and since they all stand or fall together. Furthermore, this issue applies to all the rejected claims 1-4, 6-12, 15-17 and 19-22 since the Office incorporates this base rejection of Claim 1 in rejecting each claim and adds additional references only to address additionally claimed limitations. Defeating the grounds for rejection of Claim 1 defeats the grounds for rejection of all rejected claims.

In regards to Claim 1, the Office alleges that Walendy discloses a panel having all of the elements of Claim 1 except a slit penetrating to a depth less than the panel thickness that traverses and severs the primary face or the face opposing the primary face of the panel. For such a slit, the Office points to Ducharme (Figure 1, number 28 or 29) and alleges that it is obvious to modify the panel of Walendy with such slits from Ducharme in order to achieve lateral compression over the full height of the insert. (*see*, page 5 of the pending Office Action dated 10 January 2006).

The Office has failed to establish a *prima facie* case of obviousness for at least two reasons: (1) Walendy and Ducharme do not teach or suggest to one of ordinary skill in the art a slit that penetrates to a depth less than the panel thickness that traverses and severs a primary face of the panel; and (2) Walendy and Ducharme do not teach or suggest to one of ordinary skill in the art a slit that facilitates bending of a building panel into a non-planar configuration. These reasons correspond to the sub-issues (a) and (b), below.

Sub-Issue 1(a): *Whether either Walendy or Ducharme teaches or suggests a slit that penetrates to a depth less than a panel thickness that traverses and severs a primary face of the panel.*

The Office acknowledges that Walendy does not teach or suggest a slit that penetrates to a depth less than a panel thickness that traverses and severs a primary face of the panel severs a primary face of a panel (Pending Office Action mailed 10 January 2006, page 5, first full paragraph). The core of the issue then is whether Ducharme teaches or suggests such a slit. The Office points to number 28 or 29 in

Figure 1 of Ducharme to establish such slits. Appellant respectfully contends that neither of numbers 28 and 29, nor any other element in the Ducharme reference, qualify as slits that penetrate to a depth less than a panel thickness that traverses and severs a primary face of the panel. As such, neither Walendy nor Ducharme teach or suggest a slit that penetrates to a depth less than a panel thickness that traverses and severs a primary face of the panel.

The following definitions provide a foundation for Appellant's arguments:

Primary Face of a Panel – a face having a surface area equal to the highest surface area face of the panel. (*see*, page 4, lines 18-22 of the present Application).

Thickness of a Panel – a perpendicular distance between a primary face and its opposing face. (*see*, page 4, lines 33-34 of the present Application).

Sever – To DIVIDE (*i.e.*, separate into two parts) or SEPARATE (*i.e.*, to set or keep apart). (Merriam-Webster's Collegiate Dictionary, 10th Ed.). The meaning of separating into two parts is inherent in the Application as filed, as relied on by the basis for introducing the word "sever" into Claim 1 (*see*, page 4 of Appellant's Response dated 14 October 2005 where Appellant points to element 82 in Figures 2a-2c – a slit that divides one primary face of the panel into two in order to facilitate bending of the panel into a non-planar configuration, as per discussion on page 13, lines 1-9 of the Application.).

Penetrate -- to pass into or through b : to enter by overcoming resistance : PIERCE (*i.e.*, to run into or make a hole through) c : to gain entrance to. It is clear from the amendment introducing "penetrate" into Claim 1 (cited under "Sever") that the slit penetrates (*i.e.*, passes into or through) the same primary face that it traverses and severs.

In view of these definitions, Ducharme must provide a slit in a panel that: (1) Severs a primary face of the panel – *i.e.*, divides or separates into two sections a face of the panel having the highest surface area (or face opposing that face); and (2) penetrates to a depth less than the thickness of the panel – *i.e.*, pass into or create a hole through that primary face or face opposing the primary face to a depth less than the perpendicular distance between a face of the panel having the highest surface area and its opposing face.

Elements 28 and 29 do not divide or separate into two sections a primary face (*i.e.*, a face that has the highest surface area) of the Ducharme panel. Elements 28 and

29 do not even reach a primary face of the Ducharme panel. In fact, Elements 28 and 29 do not divide or separate any face of the Ducharme panel into two sections.

Appellants fail to see any slit in the Ducharme panel or in the teaching of Ducharme that divide or separate a face of the Ducharme panel having the highest surface area, or face opposing such a face, into two sections. Therefore, Ducharme fails to provide a slit that “severs” a primary face of a panel.

Elements 28 and 29 do not penetrate to a depth less than the panel thickness. Elements 28 and 29 enter through an end of the Ducharme panel and produce a hole through the Ducharme panel that has a depth much greater than the perpendicular distance between a primary face and its opposing face since it extends almost the entire length of the panel (*see, e.g.*, figure 2 of Ducharme). Therefore, Elements 28 and 29 “penetrate” the panel of Ducharme to a depth beyond the thickness of the Ducharme panel.

Furthermore, it is evident from the text of the present Application, the figures of the present Application and the text of Claim 1 that the slit “penetrates” through the same primary face of a panel that it traverses and severs (*see, e.g.*, Figures 2a-2c and page 13, lines 1-9 wherein the slit cannot facilitate bending of the panel into a non-planar configuration as Figures 2a-2c illustrate unless it severs the primary face of the panel). Elements 28 and 29 do not penetrate through any primary face or face opposing a primary face of the Ducharme panel.

Elements 28 and 29 of Ducharme fail to provide a slit that traverses and severs a primary face of a panel to a depth less than the thickness of the panel. The Office admits that Walendy fails to provide such a slit. Claim 1, and hence, every claim in the present Application requires such a slit. As such, none of the references cited against Claim 1 teach or suggest all of the claim elements of Claim 1 since none of them:

- provides sufficient teaching for one of ordinary skill in the relevant art having the reference before him to make the proposed substitution, combination or other modification” suggested by the Office to obtain Claim 1 (*In re Linter*);
- Appear to suggest the claimed subject matter in Claim 1 (*In re Rinehart*); or

- Even make a suggestion that renders the combination proposed by the Office obvious to try, let alone “obvious.” (*Ex parte Obukowicz*)

Therefore, the Office has failed to establish a *prima facie* case of obviousness against Claim 1 of the present Application.

Sub-Issue 1(b): *Whether either Walendy or Ducharme teach or suggest a slit that facilitates bending of a building panel into a non-planar configuration.*

The present Application provides a functional requirement for the slit of Claim 1. The requirement illuminates the definition of the slit and acts as a functional definition by requiring that “[s]uch slits facilitate bending a building panel into a non-planar configuration for insertion into a cavity.” (see page 13, lines 1-5 of the present Application, emphasis added). This functional definition is a requirement for such a slit as evidenced by the affirmative language of the functional definition. The slits “facilitate bending.” There is no qualifier in this statement to the effect that the slit “*can* facilitate bending” or “*might* facilitate bending” -- it affirmatively sets forth that the slits positively “facilitate[s] bending” into a non-planar configuration. Therefore, the slit in Claim 1 must facilitate the bending of the panel into a non-planar configuration.

Neither Walendy nor Ducharme disclose a slit in a panel that facilitates bending of the panel into a non-planar configuration. The Office does not dispute this conclusion but rather argues that the functional limitation of facilitating bending into a non-planar configuration is not a necessary component of Claim 1. The Office first asserts that:

“such slits facilitate bending a building panel into a non-planar configuration” does not connote that the “slits *must* facilitate bending of the panel into a non-planar configuration.” The slits just increase the likelihood of bending the panel into a non-planar configuration and not positively bend the panel into a non-planar configuration.

(pending office action dated 10 January 2006, page 9, second full paragraph; emphasis in original). The Office fails to mention how they justify a less than mandatory requirement from the affirmative functional statement cited from the

present Application. Contrary to the Office's position, an affirmative statement of behavior is properly understood to be mandatory unless it is qualified – particularly when a “mandatory” interpretation is consistent with the Application and a “qualified” interpretation is not. The present statement has no qualification – the slits positively facilitate bending into a non-planar configuration.

The Office also states that the limitation requiring “the slits to facilitate bending a building panel into a non-planar configuration is not addressed in claims therefore, the slits do not have to bend the panel into a non-planar configuration.” (*Id.*) The meaning of a term in a claim is properly understood in the context of the patent application. “When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning.” *In re Zletz*, 893 F.2d 319, 13 USPQ2d 1320 (Fed. Cir. 1989). A slit “traversing a primary face or a face opposing a primary face and extending to a depth less than the panel thickness” incorporates its functional definition provided in the Application. Therefore, the Office is to examine the claim with that functional definition read into the meaning of the term. As such, the functional limitation is effectively in the Claim, contrary to the Office's conclusion.

Since Claim 1 requires a slit that facilitates bending the claimed panel into a non-planar configuration and neither cited reference teaches or suggests such a slit, the Office has failed to establish a *prima facie* case of obviousness against Claim 1.

SUMMARY of ISSUE 1

The Office has failed to establish a *prima facie* case of obviousness against Claim 1 of the present Application for either or both of the following reasons: (1) neither reference teaches or suggests a slit that penetrates to a depth less than a panel thickness that traverses and severs a primary face of the panel; and (2) neither reference teaches or suggests a slit that facilitates bending of a building panel into a non-planar configuration. As such, Claim 1 of the present invention is patentable over the cited references. Furthermore, since all pending claims depend from Claim 1 and the Office relies on the arguments set forth for Claim 1 to reject all other claims of the present Application, all pending claims of the present Application are patentable.

ISSUE 2: Whether Claim 22 is patentable under 35 USC §103(a) over Walendy (US 5,529,824) in view of Ducharme (US 6,062,244). In particular, whether either Walendy or Ducharme teach or suggest a panel comprising at least two panel domains as claimed in Claim 1, wherein the panel domains extend through the thickness of the panel.

The Office has rejected Claim 22 under 35 USC 103(a) as obvious over Walendy in view of Ducharme. The Office alleges that Walendy discloses a panel having all of the elements of Claim 22 except a slit penetrating to a depth less than the panel thickness that traverses and severs the primary face or the face opposing the primary face of the panel. For such a slit, the Office points to Ducharme (Figure 1, numbers 28 or 29) and alleges that it is obvious to modify the panel of Walendy with such slits from Ducharme to achieve lateral compression over the full height of the insert. For the panel domains that extend through the thickness of the panel the Office points to numbers 3 and 4 in Figure 2 of Walendy. (*see* page 4 of the pending Office Action dated 10 January 2006).

The Office has failed to establish a *prima facie* case of obviousness against Claim 22 for at least two reasons: (1) neither Walendy nor Ducharme teach or suggest the necessary slit; and (2) Walendy fails to disclose at least two panel domains that extend through the thickness of the panel. In regards to the first reason, Appellant incorporates herein by reference the arguments set forth under ISSUE 1, above. This section addresses only the second reason.

The Office points to numbers 3 and 4 in Figure 2 of Walendy as evidence of panel domains that extend through the thickness of the panel. While the Office appears to agree that number 3 does not extend the perpendicular distance from a primary face to its opposing face (*i.e.*, the thickness of the panel), the Office argues that the limitation “through the thickness of the panel” does not mean “entirely through the thickness of the panel.” (*see* pending Office Action dated 10 January 2006, page 10, last paragraph). Such an assertion is illogical and conflicts with the context of the present Application and current case law.

First, if the limitation that the panel domains extend through the thickness of the panel does not mean extending entirely through the thickness of the panel, then Claim 22 does not narrow Claim 1 in any way. Claim 1 establishes the presence of panel domains that, by their very existence, extend to some extent through the thickness of the panel. The Office has not rejected Claim 22 as claiming the same

subject matter as Claim 1 and, thereby, implicitly acknowledges that the limitation “through the thickness of the panel” means something more than that stated in Claim 1. The only logical conclusion is that the limitation means entirely through the thickness of the panel ... which is consistent with the majority of the dictionary definitions for the term “through” (*see, e.g.*, the Merriam Webster’s definition for the preposition “through” provided herewith), the figures in the present Application, and Appellants intended use of the limitation.

Second, the context and meaning from the present Application reveals to one of ordinary skill in the art that the limitation of Claim 22 means entirely through the thickness of the panel. See, for example the following use of the phrase through the thickness of the panel, and a similar variation thereof, from the pending Application:

Bands are panel domains that traverse a primary face of a building panel. Desirably, a band also extends the thickness of the panel. For example, a band may extend through the panel thickness and extend to opposing ends (the length) of a rectangular building panel. (page 5, line 32 though page 6, line 1).

A band that traverses the primary face of a building panel must already extend to some extent through the panel thickness to even exist in the panel. Therefore, the additionally desired limitation that the band extend “through the panel thickness” or the “thickness of the panel” only makes sense to mean extending the entire thickness of the panel. This is the same context as Claim 22 and, in fact, Appellant relied in part on this particular section of the Application for support when they added Claim 22 as an amendment in a Response dated 11 June 2003. The only reasonable meaning from the context of the Application for the limitation “through the thickness of the panel” is extending all the way through the thickness of the panel.

Notably, the Office raised a similar objection to the term “through” in the first two office actions of the present Application. Appellant argued similarly that “through” means all the way through in the context of the Application. The Office did not accept Appellant’s arguments and issued a final rejection and cited a single broader definition of “through”: Among or between; in the midst of : a walk through the flowers. (*see*, Final Rejection dated 6 November 2003). With the hope of facilitating prosecution, Appellant filed a Request for Continued Examination on 14 November 2003 and amended Claim 1 to remove the term “through the thickness of

the panel” while maintaining their traverse to the Office’s grounds for rejection.

Appellant maintains that the Office has improperly interpreted “through the thickness of the panel” both in their first rejections of Claim 1 and in the present rejection of Claim 22. Case law supports Appellant and has unmistakably established that:

Absent some indication in written description and/or prosecution history to provide notice to those of ordinary skill in art that inventor intended claim term to cover more than ordinary and customary meaning revealed by context of intrinsic record, *it is improper to read term to encompass broader definition simply because such definition may be found in dictionary, treatise, or other extrinsic source.*

Nystrom v. TREX Co., 76 USPQ2d 1481 (CAFC 2005) (emphasis added). It is well established through the context of the present Application, the prosecution history of this Application and the majority of pertinent dictionary definitions identified throughout the prosecution history of this Application that “through the thickness of the panel” means no less than through the entire thickness of the panel. As such, the Office improperly relies on a single definition from a dictionary to assert a broader meaning than is inconsistent with the context of the Application and its prosecution history.

The unmistakable meaning of the limitation of Claim 22 is that the panel domains of Claim 1 extend through the entire thickness of the panel. Claim 1 requires at least two panel domains – therefore Claim 22 requires at least two panel domains extend through the (entire) thickness of the panel. Walendy does not disclose a panel with panel domains that meet this requirement. Nor does Ducharme. As such, none of the references cited against Claim 22 teach or suggest all of the claim elements of Claim 22 since none of them:

- Provides sufficient teaching for one of ordinary skill in the relevant art having the reference before him to make the proposed substitution, combination or other modification” suggested by the Office to obtain Claim 22 (*In re Linter*);
- Appear to suggest the claimed subject matter in Claim 22 (*In re Rinehart*); or
- Even make a suggestion that renders the combination proposed by the Office obvious to try. (*Ex parte Obukowicz*)

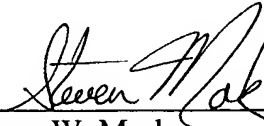
For these reasons and the reasons set forth for Claim 1, the Office has failed to establish a *prima facie* case of obviousness against Claim 22 of the present Application.

CONCLUSION

The Office has fallen short of establishing a *prima facie* case of obviousness against pending Claims 1-4, 6-12, 15-17 and 19-22. All of these claims depend from Claim 1 and the rejection of all of these claims depends at least in part upon the basis for rejecting Claim 1. However, the Office has failed to establish any teaching or suggestion from either of the references combined and cited against Claim 1 for a slit that penetrates to a depth less than a panel thickness that traverses and severs a primary face of the panel. Additionally, the Office has failed to establish any teaching or suggestion from either reference for a slit that facilitates bending of a panel into a non-planar configuration – a limitation inherent in the definition of the slit in Claim 1. Furthermore, the Office has failed to establish any teaching or suggestion from the cited references for at least two panel domains that extend through the thickness of the panel, as required in Claim 22.

For these reasons, Appellant respectfully requests reversal of all rejections and an issuance of a notice of allowance for all pending claims of the present Application.

Respectfully submitted,



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CLAIMS APPENDIX

WHAT IS CLAIMED IS:

1. (Previously Presented) A building panel comprising at least two panel domains, wherein each panel domain has an essentially homogeneous compressive strength and an average compressive strength; wherein said panel:
 - (a) has at least two panel domains having different average compressive strengths;
 - (b) is essentially free of a combination of hollow and solid foam strands;
 - (c) has an essentially uniform panel thickness;
 - (d) fits fully within a cavity defined by cavity walls and, when in said cavity, the building panel has a compressive recovery that supplies sufficient pressure against the cavity walls to frictionally retain the building panel within the cavity, said pressure being 100 Newtons-per-square-meter or more and 200,000 Newton-per-square-meter or less;and wherein, if said panel has at least two adjacent panel domains containing fibrous material with a fiber orientation, the fiber orientation of one panel domain is non-orthogonal to the fiber orientation of at least one adjacent panel domain and wherein the panel has an edge containing a panel domain extending from a primary face to an opposing face at that edge and wherein the panel has a primary face, a face opposing the primary face, a panel thickness, and a slit penetrating to a depth less than the panel

thickness that traverses and severs the primary face or the face opposing the primary face.

2. (Original) The panel of Claim 1, wherein at least two domains differ in average compressive strength by at least 5%.

3. (Original) The panel of Claim 1, wherein at least one panel domain is a conformable panel domain that, when compressed, reduces at least one dimension of the panel thereby allowing insertion of the panel into a cavity; wherein the panel also has a compressive recovery that causes frictional retention of the panel within the cavity.

4. (Original) The panel of Claim 1, wherein at least one panel domain is a conformable panel domain that allows the panel to reversibly bend from a planar to a non-planar configuration.

5. (Cancelled)

6. (Original) The panel of Claim 1, wherein the panel has alternating conformable and rigid panel domains.

7. (Original) The panel of Claim 1, wherein the panel has a perimeter and said perimeter comprises at least one conformable panel domain.

8. (Original) The panel of Claim 1, wherein the panel has a conformable panel domain along at least one edge.

9. (Original) The panel of Claim 1, wherein the panel domains are bands.

10. (Original) The panel of Claim 1, wherein the panel has at least one edge that comprises a tongue or groove profile.

11. (Original) The panel of Claim 1, wherein at least one panel domain is a polymeric foam.

12. (Original) The panel of Claim 11, wherein each panel domain comprises a polymeric foam.

13. (Cancelled)

14. (Cancelled)

15. (Original) The panel of Claim 11, wherein at least one panel domain has an open cell content of 5 percent or more, according to American Society for Testing and Materials method D2856-A.

16. (Original) The panel of Claim 1, wherein at least one panel domain comprises coalesced polymeric foam strands.

17. (Original) The panel of Claim 16 wherein the coalesced polymeric foam strands comprise polypropylene.

18. (Original) The panel of Claim 16, wherein at least one panel domain comprises coalesced polymeric foam strands having interstrand spaces.

19. (Original) The panel of Claim 1, wherein the panel comprises coalesced polypropylene foam strands having an average cell diameter within a range of from 0.01 millimeters to 10 millimeters, and having a density within a range of from 5 kilograms per cubic meter to 100 kilograms per cubic meter; wherein at least one panel domain has an open cell content of 5 percent or more, according to American society for Testing and Materials method D2856-A.

20. (Original) The panel of Claim 11, wherein the foam's average cell diameter is within a range of from 0.1 millimeters to 4 millimeters, the foam's density

is within a range of from 5 kilograms per cubic meter to 50 kilograms per cubic meter,
and wherein the foam has an open cell content of 50% or greater, according to
American society for Testing and Materials method D2856-A.

21. (Previously Presented) The panel of Claim 1 wherein at least one edge of
the panel is a conformable domain.

22. (Previously Presented) The panel of Claim 1 wherein the panel domains
extend through the thickness of the panel.

EVIDENCE APPENDIX

See accompanying photocopy pages from the Merriam-Websters Collegiate Dictionary, 10th Ed. Photocopy pages include the cover and cover page, pages 858-59 on which the definition of “penetrate” bridges those pages; page 1073 which contains the definition of “sever” and page 1230 which contains the definition for the preposition “through.”

Appln. No. 10/037,942
Brief for Appellant dated March 10, 2006
Reply to Office Action of January 10, 2006

RELATED PROCEEDINGS APPENDIX

None.

The Voice of Authority

Merriam Webster's Collegiate Dictionary

TENTH EDITION

America's best-selling dictionary



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Carrying forward Noah Webster's
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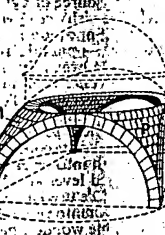
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pen-ality ['pe-ni'-l-tē] *n, pl -ties* [ML *poenaliſas*, fr. L *poenalis*] (15c): 1: the suffering in person, rights, or property that is annexed by law or judicial decision to the commission of a crime or public offense; 2: the suffering or the sum to be forfeited to which a person agrees to be sub-

jected in case or nonfulfillment of stipulations 3: a disadvantage, loss, or hardship due to some action b: a disadvantage (as loss of yardage, time, or possession of the ball or an addition to or subtraction from the score) imposed on a team or competitor for violation of the rules of a sport 4: points scored in bridge by the side that defeats the opposing contract usu. used in pl. — **penalty adj** 1: a penalty box n (1931): an area alongside an ice hockey rink to which penalized players are confined for the duration of their penalty **penalty kick** (1889) 1: a free kick in rugby 2: [a free kick at the goal in soccer made from a point 12 yards in front of the goal and allowed for certain violations within a designated area around the goal] **penalty shot** n (ca. 1948): an unhindered shot at the goal in ice hockey awarded to an individual for certain violations by an opponent **pen-ance** \ˈpe-nən(t)s\ n [ME, fr. OF, fr. ML *pœnitentia* penitence] (14c) 1: an act of self-abasement, mortification, or devotion performed to show sorrow or repentance for sin 2: a sacramental rite that is practiced in Roman, Eastern, and some Anglican churches and that consists of private confession, absolution, and a penance directed by the confessor 3: something as a hardship or penalty resembling an act of penance (as in compensating for an offense) **pen-ance v** pen-anced; pen-ancing (1600): to impose penance on **Pe-na-tes** \ˈpə-nā-tez, -nā-\ n pl [L, fr. *penus* food/provisions] (the Roman gods of the household worshipped in close connection with Vesta and with the Lares.) **pen-ce** \ˈpen(t)s\ pl of PENNY **pen-cel** or **pen-cil** \ˈpen(t)-səl\ n [ME *pen-cel*, modif. of OF *penonce*] (13c): PENCIL **pen-chant** \ˈpen-čənt\ *vip. Brit* ˈpä-šän\ n F, fr. prp. of *pencher* to incline, fr. (assumed) *V. pendicare*, fr. L *pendere* to weigh (1672): a strong and continued inclination; broadly: LIKING **pen-cil** \ˈpen(t)-səl\ n [ME *pen-sel*, fr.: MF *pinel*, syn see LEANING] **penicill-us** alter. of L *penicillus*: dim. of *peniculus* brush/fr. dim. of *penis* tail, penis (14c) 1: an artist's writing, drawing, or marking individual skill or style 3: a: an implement for brushing, drawing, or marking consisting of or containing a slender cylinder or strip of a solid-marking substance b: a small dedicated or cosmetic roll or stick for local applications 4: a set of geometric objects each pair of which has a common property (the lines in a plane through a point comprise a ~ of lines) 5: something (as a beam of radiation) long and thin like a pencil **pen-cil v** -cilled or -cilled; -ciling or -cilling \-(s)-ɪŋ\ (ca. 1532) to paint, draw, write, or mark with a pencil **pen-ciling** or **pen-cil-ling** n (1706): the work of the pencil or brush; also: a product of this **pen-cil pusher** n (1881): a person who does predominantly paperwork **pen-dant** also **pen-dent** \ˈpen-dənt; 3 & 4 are also ˈpe-nənt, 5 is also ˈdäv\ n [ME *pendant*, fr. MF *pendant*, fr. prp. of *pendre* to hang, fr. (assumed) VL *pendere*, fr. L *pendere*; akin to L *pendere* to weigh, estimate, pay, *pondus* weight] (14c) 1: something suspended; as: a: ornament (as on a necklace) allowed to hang free; b: an electrical fixture suspended from the ceiling 2: a hanging ornament of roofs or ceilings much used in the later styles of Gothic architecture 3: a length of line usu. used as a connector on a boat or ship; esp.: a short rope hanging from a spar and having at its free end a block or spliced thimble 4 chiefly Brit: PENNANT 1a 5: a COMPANION PIECE **pen-den-cy** \ˈpen-dənt(-t)-sē\ n (1637): the state of being pending **pen-dent** or **pend-ing** \ˈpen-dənt\ *adj* [ME *pendant*] (14c) 1: jutting or leaning over: OVERHANGING (a ~ cliff) 2: supported from above: SUSPENDED (cicles ~ from the eaves) 3: remaining undetermined: PENDING **pen-den-tive** \ˈpen-dən-tiv\ n [F *pendentif*, fr. L *pendens*, prp. of *pendere*] (ca. 1741): one of the concave triangular members that supports a dome over a square space **pend-ing** \ˈpen-din\ prep [F *pendant*, fr. prp. of *pendre*] (1642) 1: DURING 2: while awaiting **pending** *adj* (1797) 1: not yet decided: being in continuance 2: IMMINENT, IMPENDING **pen-du-lar** \ˈpen-jə-lər, -ˈpen-dyə-, -də-\ *adj* (1878): being or resembling the movement of a pendulum **pen-du-lous** \-ləs\ *adj* [L *pendulus*, fr. *pendere* to hang] (ca. 1605) 1: archaic; poised without visible support 2: a: suspended so as to swing freely (branches hung with ~ vines) b: inclined or hanging downward (~ jaws) 3: marked by vacillation, indecision, or uncertainty — **pen-du-lous-ness** n **pen-du-lum** \-ləm\ n [NL, fr. L neut. of *pendulus*] (1660) 1: a body suspended from a fixed point so as to swing freely, to and fro under the action of gravity and commonly used to regulate movements (as of clockwork) 2: something (as a state of affairs) that alternates between opposites **Pe-nel-o-pe** \ˈpə-ne-lə-pē\ n [L, fr. Gk *Penelope*]: the wife of Odysseus who waits faithfully for him during his 20 years' absence **pe-ne-plain** also **pe-ne-plane** \ˈpe-nī-plān, -ˈpe-n\ n [L: *paene*, *plane* almost + E *plain* or *plane*] (1889): a land surface of considerable area and slight relief shaped by erosion **pen-e-trable** \ˈpe-no-trə-bəl\ *adj* (1538): capable of being penetrated — **pen-e-tra-bil-i-ty** \ˈpe-no-trə-bi-lə-tē\ n **pen-e-tral-ia** \-trā-lə-ə\ n pl [L, neut. pl. of *penetralis* inner, fr. *penetrare* to penetrate] (1668): the innermost or most private parts **pen-e-trance** \ˈpe-no-trən(t)s\ n [ISV, fr. L *penetrare*] (1934): the proportion of individuals of a particular genotype that express its phenotypic effect in a given environment **pen-e-trant**, \-trənt\ *adj* (1543): PENETRATING **penetrant** n (ca. 1734): one that penetrates or is capable of penetrating.

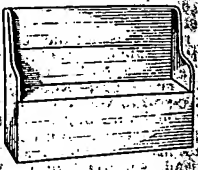


16) 1: a long seat with a back; 2 a back
sets 2: a large bird dog of a type

thematics or of symbolic logic that
sets — set theoretic adj
manner, position, or direction in
ie or bed in which a gem is set; also
place, and circumstances in which
he time and place of the action of a
k: the scenery used in a theatrical
ic composed for a text (as a poem)
ing a place at table (two ~s of ster-
incubation. *syn* see BACKGROUND
uated scale or wheel on the mount-
indicating right ascension or declina-
any of a series of gymnastic exer-
supple muscles, and easy control of

ing \set-ſin, -sɛ-tl-in [ME, fr. *se-*
etian, fr. *seil* seat] vi (1515) 1: to
ish in residence. 2: to furnish with
use to pack down. 3: to clarify by
4: to make quiet or orderly. 5: a
the question. 6: to establish or
royal succession. 7: to conclude
arties usu. out of court. 8: to close
less than is due. 9: to arrange in
arrange for final disposition of (set
IMPREGNATE ~ vi 1: to come to
the bottom. 2: to become clear by
to become compact by sinking. 3
established (a cold settled in his chest)
only (settled in Wisconsin). 4: to
quiet or orderly. 5: to take up an
with down (marry and ~ down). 6
s: b: to come to a decision. 7: used
mal. 8: to conclude a lawsuit by
mal. CONCEIVE *syn* see DECIDE
adj settle for: to be content
ence or subdue someone by decis-
to remove or relieve the distress or

at, chair
t, L sella
553): a
solid back,
h can be



1: the
anist of
der legal
income
ment 3 a
place or
village. 4
greement
or adjustment of an account
stitution providing various commu-
ications

one that settles (as a new region)
4: SEDIMENT, DREGS — usu. used in

8): one that makes a settlement or
3): a usu. brief and vigorous fight or

actively and earnestly. 2: to begin

carriage of the body; esp. erect and
N. MAKEUP. 2: a: the assembly and
ratus required for the performance of
and adjustment of machines for an

g: b: glass, ice, and mixer served to
uor. 4: a: a camera position from
footage taken from one camera posi-

the production. 5: a: a position of
hich it is easy to score. b: a task or
something easy to get or accomplish

ing play in sports. 6: a: the manner
s of a machine, apparatus, or me-
system are arranged, designed, or

n which political, social, or adminis-
or established practice. 7: PROJECT,
it or trickery in order to compromise

and place in a high position. b: to
ward (as a plan) for acceptance. 2: a

g a living (set him up in business). b

a: to cause (one) to take on a
ing operation. 3: a: CAUSE, CREA-
ing operation. 4: to place in power or in office

5: a: to raise from depression
ud or vain. 6: a: to put forward or
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(set up a home for orphans). 8: a
g a living (set him up in business). b

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ing operation. 4: to place in power or in office

out plans for (set up a bank robbery). 12: a: to pay for (drinks). b
to treat (someone) to something. 13: a: to put in a compromising
or dangerous position usu. by trickery or deceit. b: FRAME 3. 14: to
execute one or more plays in preparation for scoring. ~ vi. 1: to
come into active operation or use. 2: to begin business. 3: to make
pretensions (has never set up to be a wise man — Thomas Rogers). 4
to become firm or consolidated. ~ HARDEN — set-up-housekeeping
to establish one's living quarters — set up shop: to establish one's
business

seven \se-von, -sɛ-b'm [ME, fr. *seven*, adj., fr. OE *seofon*; akin to
OHG *sibun*, *seven*, L *septem*, Gk *hepta*] (bef. 12c) 1 — see NUMBER

table 2: the seventh in a set or series (the ~ of diamonds). 3: some-
thing having seven units or members — seven adj — seven pron; pl in
constr. ~ adj or n

seven-fold \se-vn-fōld, adj (bef. 12c) 1: having seven units or members
2: being seventimes as great or as many — sevenfold adv

seven seas n pl (1872) 1: all the waters or oceans of the world
seven-teen \se-vən-teen, -sɛ-b'm-tən [seventeen, adj., fr. ME *seventene*,
fr. OE *seofontene*; akin to OE *ten* ten] (14c) — see NUMBER table

seventeen \se-vən-teen, -sɛ-b'm-tən [seventeen, adj., fr. ME *seventene*,
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of warmth, color, or feeling and may apply to rigorous restraint, sim-
plicity, or self-denial (living an *ascetic* life in the country). ASCETIC
implies abstinence from pleasure and comfort or self-indulgence as
spiritual discipline (the *ascetic* life of the monastic orders).

severe combined immunodeficiency n (1974): a rare congenital
disorder of the immune system that is characterized by inability to
produce a normal complement of antibodies and T cells and that usu.
results in early death — called also *severe combined immune deficiency*

sevi-che \sə-vē-('chā, -chē n [AmerSp] (1952): a dish of raw fish
marinated in lime or lemon juice often with oil, onions, peppers, and
seasonings and served esp. as an appetizer

Sèvres or Sèvres \se-vr, -sɛv(r) n [Sèvres, France] (1786): an often
elaborately decorated French porcelain

sev-ru-ga \sə-vrū-gə, -sɛ-v n [Russ. *severyuga*, a species of sturgeon]
(1591): a light to dark gray caviar from a sturgeon (*Acipenser sevrus*) of
the Caspian Sea that has very small roe; also: the fish

sew \sə, -vɔ, -sɛw, -sɛw n [OE *sewian*; akin to OHG *siuwan* to sew, L *suere* vi (bef. 12c) 1: to unite
or fasten by stitches. 2: to close or enclose by sewing (~ the money
in a bag). ~ vi: to practice or engage in sewing — sew-abil-ity \sə-
-ə-bil-ə-ti, -n — sew-able \sə-ə-bəl adj

sew-age \sə-ij, -n [sewer] (1834): refuse liquids or waste matter, car-
ried off by sewers

sewer \sew-ər, -sɛw-ər n [ME, fr. AF *aseour*, lit. seater, fr. OF *aseoir*
to seat, more at ASSIZE] (14c): a medieval household officer often of
high rank in charge of serving the dishes at table and sometimes of
seating and taster

sewer \sew-ər, -sɛw-ər n (14c): one that sews

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sewer \sew-ər, -sɛw-ər n (14c): one that sews

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hurried and usu. careless manner (a bookshelf hastily thrown to
2.: to bring into casual association), (different) kinds of people
thrown together — Richard Sennett)
THROW, **CAST**, **TOSS**, **FLING**, **HURL**, **PITCH**, **SLING**, **meat** 1.
move swiftly through space by a propulsive movement or impulse
force. **THROW** is general and interchangeable with the other terms
may specify imply a distinctive motion with bent arm (the term
fastball and a curve). **CAST** usu. implies lightness in the thing
and sometimes a scattering (cast it to the winds); **TOSS** suggests a
or careless/or aimless throwing; and may imply an upward
(tossed the coat on the bed). **FLING** stresses a violent throwing
the ring back in his face). **HURL** implies power as in throwing a
weight (hurled himself at the intruder). **PITCH** suggests throwing ca-
fully at a target (*pitch* horseshoes). **SLING** stresses either the
whirling momentum in throwing or directness of aim (clung the
over his shoulder).

throw n. (1530) 1. a: an act of throwing; hurling or flinging b:
an act of throwing dice (2): the number thrown with a cast of
c: a method of throwing an opponent in wrestling or judo d:
distance a missile may be thrown or light rays may be projected
e: an undertaking involving chance or danger; risk; venture f:
amount of vertical displacement produced by a geological fault
g: the extreme movement given to a pivoted or reciprocating piece
cam/crank, or eccentric h: STROKE i: b: the length of the radius
crank or the virtual crank radius of an eccentric or cam c
coverlet (as a piece) b: a woman's scarf or light wrap
for each one: A PIECE (copies are to be sold at \$5 off throw-stick
Bret).

throw-away \throʊ-ə-waɪ/ n. (1903) 1.: one that is or is designed to
be thrown away as it is free handbill or circular; 2.: fall of dis-
cism delivered casually 2.: something made or done without care
interest.

throwaway adj. (1928) 1.: designed to be thrown away DISCAR-
CONTAINERS 2.: written or spoken (as in a play) in a throw-
unemphatic manner (lines) 3.: NONCHALANT, CASUAL

throw away v. (1530) 1. a: to get rid of as worthless or unuseful
b: DISCARD 2b-2 a: to use in a foolish or wasteful manner (I
ber b: to fail to take advantage of WASTE 3: to make (as a line
play) unemphatic by casual delivery 4: to send to the trash can
back (throw-back n.) (1888) 1. a: reversion to an earlier
or phase b: ATAVISM b: an instance or product of atavism
one that is suggestive of or suited to an earlier time or era
throw-back w. (1840) 1.: to delay the progress or advance of
2: to cause to rely; make dependent (they are thrown back upon
native intelligence — Michael Novak); 3.: REFLECT v: to react
an earlier type or phase (to)

throw down v. (14c) 1.: to cause to fall: OVERTHROW 2b
TATE 3: to cast off: DISCARD

throw-in \throʊ-ɪn/ n. (1881) 1.: an act or instance of throwing a ball
in play after it has gone into touch; 2.: a throw from an outfield
into the infield in baseball; 3.: an inbound pass in basketball

throw in w. (1678) 1.: to add as a gratuity or supplement 2b to
introduce or interject in the course of something; 3: CONTRIBUTE

throw in some sound effects on several songs — Tom Phillips
DISTRIBUTE 3b: ENGAGE (throw in the clutch) — id to catch
association or partnership; JOIN (agrees to throw in with a crowd
cop New York Times)

sponge up \spɒndʒ ʌp/ to abandon a struggle or contest; acknowledge defeat
GIVE UP

throw off v. (1618) 1. a: to free oneself from; get rid of (throw
his inhibitions) b: to cast off often in a hurried or vigorous man-
ABANDON (throw off all restraint); c.: DISTRACT/DIVERT (dogs throw
off by a false scent) 2.: EMIT, GIVE OFF (stacks throwing off plume
smoke) 3.: to produce in an offhand manner; execute with speed
facility (some little time that she composed had thrown off — Jim
Hilton) 4.: a: to cause to depart from an expected or desired com-
mistakes throw his calculations off) b: to cause to make a mis-
take; MISLEAD — w 11: to begin hunting 2: to make derogatory
comments about

throw out v. (1526) 1. a: to remove from a place, office, or employ-
ment usu. in a sudden or unexpected manner b: to get rid of
worthless or unnecessary 2: to give expression to (uttered
remark) 3: that utterly confounded him (Stan Stafford) 4: to
dismiss from acceptance or consideration; REJECT (he threw out
the proposal) 5: to leave behind; OUTDISTANCE 6: to give forth (the small
schedule out) — F.D.Roosevelt o 9: to cause to stand out b
prominent 10: to make a throw that enables a teammate to pull
base runner) — w 11: to begin hunting 2: to make derogatory
comments about

throw over v. (1835) 1.: to forsake (deserted bonds of attachment)
2: to refuse to accept; REJECT (we refused to throw overboard
pillow n. (1956): a small pillow used esp. as a decorative accen-

throw rug n. (1928): SCATTER RUG

throw-star \throʊ-ˈstɑːr/ n. (15c): one who throws textile filaments

throw up v. (15c) 1.: to raise quickly 2: GIVE UP, QUIT (the ur-
throw up all intellectual work. — Norman Mailer) 3: TO BUILD
badly (new houses thrown up almost overnight) 4: VOMIT 5: to
bring forth PRODUCE 6: to make distinct esp. by contrast (came
in and out) 7: to mention repeatedly by way of approach — w 11: to
throw up one's hands; 2: to admit defeat (in the end throw up
ends in despair — Frank Conroy)

throw weight n. (1969): the maximum payload of an ICBM

throw w. OF THROUGH 1. a: to put or set (the hammer
rum \θrʊm/ n. [ME fr. OE *thruman*] 1. a: the drum fragment of a
musical instrument; akin to OHG *drum* fragment) (14c) 1. a: (180 fine
of rum threads left on the loom after the cloth has been removed)
one of these warm threads b: a tuft or short piece of loose yarn used

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